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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1187

BERTHA FRIEND, MIDDLE ATLANTIC TRANSPORTATION COMPANY, AND MILBURN MARTIN,
Petitioners,

vs.

FRED J. FRIEND,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND SUPPORTING BRIEF.

PHILIP R. SHIFF,
Counsel for Petitioners.

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Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully represent:

A

Summary Statement of Matter Involved

The petitioner Bertha Friend brought an action against the petitioners Middle Atlantic Transportation Company and Milburn Martin to recover damages for personal injuries sustained as a result of a collision between an automobile operated by respondent Fred J. Friend, in which the petitioner Bertha Friend was a passenger, and a motor truck owned by petitioner Middle Atlantic Transportation Company and operated by petitioner Milburn Martin, its servant and agent (R. 4-6).

This suit was originally brought in the state court, but was removed by the defendants to the federal court, there being diversity of citizenship between the plaintiff and the defendants (R. 7). The defendants then impleaded respondent Fred J. Friend, pursuant to Rule 14 (a) of the Federal Rules (Rules of Civil Procedure for the District Courts of the United States,* 28 U. S. C. A. following section 723 c) (R. 14-16). Thereafter, the plaintiff amended her complaint and claimed that her injuries were caused by negligence of both respondent and defendants originally sued (R. 21). The respondent moved to strike this amendment and filed what he termed a "plea to the jurisdiction," actually a motion to dismiss (Federal Rules of Civil Procedure, Sec. 12 (b)), on the ground that there was no diversity of citizenship between himself and the plaintiff (R. 22-24). These motions were denied by the District Court (Opinion reported in 61 F. Supp. 101, and printed in record pp. 26-29). Thereafter, respondent filed answers to the plaintiff's complaint (R. 30) and to the third-party complaint (R. 31) and the case proceeded to trial and was fully heard on its merits. The trial resulted in a verdict of $6,000.00 in favor of the plaintiff against all defendants (R. 32).

On appeal to the Circuit Court of Appeals for the Second Circuit, the judgment in favor of the plaintiff was reversed as to the defendant-respondent Fred J. Friend, but was affirmed as to the defendants-petitioners Middle Atlantic Transportation Company and Milburn Martin, the court being of the opinion that the District Court could not exercise jurisdiction over the plaintiff's claim against respondent, because there was no diversity of citizenship between them (opinion reported in 153 F. (2d) 778; printed in record at pp. 55-58).

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* See Appendix.

B

Jurisdiction

The jurisdiction of this Court is invoked under Judicial Code, Section 240 (a), as amended by the Act of February 13, 1925, 28 U. S. C. A. section 347.

The date of the judgment to be reviewed is February 27, 1946 (R. 58).

C

Question Presented

Can a District Court exercise jurisdiction over a claim asserted by a plaintiff against a third-party defendant impleaded under Rule 14 (a) of the Rules of Civil Procedure for the District Courts of the United States, when such claim is not supported by separate jurisdictional grounds?

D

Reasons Relied On for Allowance of the Writ

1. The decision of the Circuit Court of Appeals involves an important question of procedure in the federal courts, which has not been, but should be settled by this Court.

2. The decision of the Circuit Court of Appeals apparently is in conflict with applicable decisions of this Court.

3. The decision of the Circuit Court of Appeals is in conflict with decisions of other Circuit Courts of Appeals on the same matter.

4. The decision of the Circuit Court of Appeals is in conflict with the weight of authority on this question.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued by this Court, directed to the

United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in this cause, numbered and entitled on its docket, No. 20009, Bertha Friend *v.* Middle Atlantic Tranportation Company, *et al.*, and that the judgment of the said Circuit Court of Appeals entered on February 27, 1946, may be reversed by this Court, and that they may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and

Your petitioners will ever pray.

PHILIP R. SHIFF,
Counsel for Petitioners.